Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

JOHN OSCAR REIVES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. Whether the United States Supreme Court should clearly outline under what circumstances a trial court must instruct the jury on the definition of reasonable doubt where the United States Courts of Appeals decisions on the issue are in conflict.

2. Whether the Court of Appeals for the Fourth Circuit committed reversible error and deprived the Petitioner of Due Process by affirming the trial court's refusal to provide to the jury a definition of the reasonable doubt after the jury specifically requested a definition of reasonable doubt during jury deliberations.

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IV. REFERENCE TO OFFICIAL OPINION

The official opinion by the United States Court of Appeals for the Fourth Circuit, which is the subject of this Petition, is cited as United States v. Reives, 15 F.3d 42 (4th Cir. 1994). The case was originally tried in the United States District Court for the Middle District of North Carolina before the Honorable Judge William L. Osteen (CR-92-36-D).

V. STATEMENT OF JURISDICTION

The judgment which the Petitioner seeks to have reviewed, cited as United States v. Reives, 15 F.3d 42 (4th Cir. 1994) was entered on January 19, 1994 by the United States Court of Appeals for the Fourth Circuit. The United States Supreme Court has jurisdiction to review the petitioner's Petition for Writ of Certiorari pursuant to 28 U.S.C. 1254.

VI. STATEMENT OF CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

Pursuant to Rule 14(f) of the Rules of the Supreme Court of the United States, the Petitioner identifies the following constitutional provisions, treaties, statutes, ordinances, and regulations pertinent to this case.

1. 21 U.S.C. §846

> "Any person who attempts or conspires to commit an offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

2. U.S. Const. Amend. V

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in

jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

VII. STATEMENT OF THE CASE

Summary of Case

The Petitioner, John Oscar Reives, was indicted and charged with conspiring with General Samuel Bristow and Frederick Douglas Johnson to distribute "crack" cocaine. Pursuant to an undercover surveillance operation by law enforcement authorities, agents purchased crack cocaine from General Samuel Bristow and Frederick Douglas Johnson. There was no evidence directly establishing that the Petitioner was a party to this transaction. Rather, General Samuel Bristow and Frederick Douglas Johnson each agreed to provide testimony for the government in exchange for a reduction in the criminal charges and/or sentencing which resulted from their illegal actions. General Samuel Bristow and Frederick Douglas Johnson testified that the

Petitioner provided the cocaine which was allegedly sold during the transaction. The jury found the Petitioner guilty of conspiracy to distribute crack cocaine.

Nature of Case

The Petitioner was indicted and charged with conspiring to distribute "crack" cocaine. A criminal trial, No: CR-92-36-01-D was held in the United States District Court for the Middle District of North Carolina (Durham Division) on June 15, 1992. The Honorable William L. Osteen, Sr. presided over the criminal trial. Prior to the trial court's charge to the jury, counsel for the Petitioner requested that the trial judge define the "reasonable doubt" standard during the course of instructing the jury. Transcript Vol. III, pp. 72-78. The court refused to provide the requested

instruction as it pertained to the definition of "reasonable doubt". Id. At the conclusion of closing arguments by the parties' respective counsel, the court instructed the jury on the rules of law that they were to follow and apply in deciding the case. The trial court's jury instructions, in their entirety, are contained in the Transcript, Vol. III, pp. 117-142.

During the course of deliberation, the jury, on its own volition, requested assistance from the court. Specifically, the foreperson of the jury sent the following request to the trial judge: "We need further clarification as to 'reasonable doubt'." Transcript, Vol. III, p. 36. The trial judge indicated at this point that he was not inclined to comply with the jury request concerning

the definition of "reasonable doubt". Transcript, Vol. III, p. 138.

Counsel for the Petitioner, Mr. Van Camp, then stated to the trial court as follows:

> If Your Honor please, I think this creates another situation, and that is, now the jury has specifically asked you to give them a definition. It's not like we're gratuitously giving them one. The jury obviously has a problem with this. On their own motion they have come forward to the judge and said, "We want to know what that phrase means legally." . . . .
>
> And it seems to me, when they ask you that -- I mean there was a definition of "reasonable doubt" that we used in this district. It wasn't the state one, it was a different one, somewhat. I can't believe that all of those cases were tried incorrectly up to that time. People were found guilty and not guilty, and life went on. And just to say, for example, that definition now, all of a sudden, becomes obsolete as of -- to a certain time -- I would, for the record, move that the Court consider the definition which we have previously provided on our

> request for instructions to be given to the jury, which was the definition which was routinely used in our system. And the Fourth Circuit in this courtroom, and courthouse, and to my knowledge, for some thirty or forty years, it was never reversed on that basis.

Transcript, Vol. III, pp. 138-139.

Despite the specific request from the jury and the specific request from counsel for the Petitioner that the Court comply with the jury request and instruct the jury regarding the definition of the term "reasonable doubt", the trial judge refused to give the requested instruction or any other definition of reasonable doubt. Transcript, Vol. III, p. 140. The trial judge proceeded to call the jury back into court, and re-read a single paragraph from the original instruction given to the jury prior to deliberations.

Specifically, the trial judge stated as follows:

> [T]hat while the Government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the Government's proof exclude any reasonable doubt concerning the defendant's guilt. A reasonable doubt may arise from the evidence, or from a lack of evidence. . . .
>
> That's as much definition as I can give you on "reasonable doubt". You'll take that instruction, along with the instructions which I have given you, and which you have a copy of, to take to your jury room and continue your deliberation. Thank you very much.

Transcript, Vol. III, p. 141.

The trial judge then sent the jury back for further deliberation. The trial judge proceeded to make the following comments in open court:

> Mr. Van Camp, it's possible that nothing further will come of the matter. But I will tell you, if I haven't told you earlier, that

> sitting from the perspective where I sit, it occurs to me that the definition of "reasonable doubt" is an important item in criminal law. And that the history of our country is such length and duration that there should be a good definition of "reasonable doubt" formulated to the extent that trial courts can give more than the instruction which I have just given; and I wish it were so. But I must say that that's the way I read the law at this time.

Transcript, Vol. III, pp. 141-142.

After several hours of deliberation, the jury found the Petitioner guilty of conspiring to distribute "crack" cocaine in violation of Title 21, United States Code, Section 846. The Petitioner appealed to the Fourth Circuit and assigned as error the trial judge's failure to instruct the jury on the definition of the "reasonable doubt" standard, when the jury specifically requested such a definition. The Fourth

Circuit, although citing the great confusion in the law among the circuits as well as within the Fourth Circuit, affirmed the Petitioner's conviction.

VIII. REASONS FOR ALLOWING WRIT OF CERTIORARI

I. THE DECISION BY THE FOURTH CIRCUIT IN THE CASE AT BAR IS IN DIRECT CONFLICT WITH DECISIONS FROM OTHER FEDERAL CIRCUIT COURTS AND THUS THE SUPREME COURT SHOULD GRANT THE PETITIONER'S REQUEST FOR A WRIT OF CERTIORARI AND DEFINITIVELY RESOLVE THE ISSUE.

Pursuant to Rule 10 of the Supreme Court Rules, a review on Writ of Certiorari is not a matter of right, but a matter of judicial discretion. Although a Petition on Writ of Certiorari will be granted only when there are special and important reasons, subsection (a) to Rule 10 outlines "the character of reasons that will be considered" by the court. Specifically, Rule 10(a) states that the

Supreme Court should consider review "when the United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter." In the case at bar, the Fourth Circuit expressly acknowledged that the issue of whether or not to define reasonable doubt to a jury "has engendered a fair amount of controversy, but little in the way of hard and fast rules for the trial courts." United States v. Reives, 15 F.3d at 44. The Fourth Circuit went on to state "the Court of Appeals are divided about if, when, and how the concept of 'reasonable doubt' should be defined." United States v. Reives, 15 F.3d at 44.[1]

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[1] The Fourth Circuit's decision specifically acknowledged that four circuits agree that the failure to define reasonable doubt is reversible error, four circuits agree that the decision to define should be left to the trial court's discretion, and two circuits (including the Fourth Circuit), leave the decision

An examination of the relevant current case law in the federal circuit courts clearly establishes that the Fourth Circuit's decision in United States v. Reives directly conflicts with the decisions from other federal circuits. More importantly, a review of the relevant case law illustrates that there is no continuity whatsoever among the federal circuits regarding if or when it is appropriate to define reasonable doubt to the jury.

For example, the Third, Eighth, Tenth, and District of Columbia Circuits require that the court give an instruction defining reasonable doubt when requested by a defendant or the jury. See, e.g., Blatt v. United States, 60 F.2d 481, (3rd

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with the trial court but condemn the use of any definition. See United States v. Reives, 15 F.3d at 44 n.1.

Cir. 1932); Friedman v. United States, 381 F.2d 155, 160 (8th Cir. 1967); United States v. Pepe, 501 F.2d 1142, 1143 (10th Cir. 1974); Schencks v. United States, 2 F.2d 185, 187 (D.C. Cir. 1924). However, the Fourth, Fifth, and Seventh Circuits have taken the position that, as a general rule, no attempt at all should be made to define reasonable doubt. See, e.g., United States v. Moss, 756 F.2d 329, 333 (4th Cir. 1985); Thompson v. Lynaugh, 821 F.2d 1054, 1060-61 (5th Cir.) cert. denied, 483 U.S. 1035, 108 S.Ct. 5, 97 L.Ed.2d 794 (1987); United States v. Hall, 854 F.2d 1036, 1099 (7th Cir. 1988); United States v. Shaffner, 524 F.2d 1021, 1023 (7th Cir. 1975), cert. denied, 424 U.S. 920, 96 S.Ct. 1126, 47 L.Ed.2d 327 (1976); United States v. Lawson, 507 F.2d 433 (7th Cir. 1974), cert. denied, 420

U.S. 1004, 95 S.Ct. 1446, 43 L.Ed.2d 762 (1975).

While not requiring a definition of reasonable doubt, the First Circuit has held that a trial judge's decision to give an instruction defining reasonable doubt is discretionary. United States v. Littlefield, 840 F.2d 143, 146-47 (1st Cir.), cert. denied, 488 U.S. 860, 109 S.Ct. 155, 102 L.Ed.2d 126 (1988). Similarly, the Sixth Circuit does not require a definition of reasonable doubt, but has recognized that the failure to define may violate due process unless the "totality of the circumstances" establishes that a defendant otherwise received a constitutionally fair trial. Whiteside v. Parke, 705 F.2d 869, 871-72 (6th Cir.), cert. denied, 464 U.S. 843, 104 S.Ct. 141, 78 L.Ed.2d 133 (1983). The Ninth Circuit has held that the decision

concerning whether or not to define reasonable doubt rests within the discretion of the trial court, holding that "an appropriate instruction defining reasonable doubt is permissible but not necessarily required." United States v. Nolasco, 926 F.2d 869, 872 (9th Cir.) (en banc), cert. denied, ___ U.S. ___ 112 S.Ct. 111, 116 L.Ed.2d 80 (1991).

Based on the foregoing authority it is clear that the decision by the Fourth Circuit Court of Appeals in the case at bar is in direct conflict with previous decisions by four federal circuit courts. Specifically, the Fourth Circuit's decision is in direct conflict with decisions from the Third, Eighth, Tenth, and District of Columbia Circuits, which require the trial court to define reasonable doubt for the jury. In order to insure fair and consistent treatment of

all defendants in all circuits, the Supreme Court should grant the Petitioner's petition for Writ of Certiorari and resolve this issue.

II. THE COURT OF APPEALS FOR THE FOURTH CIRCUIT VIOLATED THE PETITIONER'S RIGHT TO DUE PROCESS AND COMMITTED REVERSIBLE ERROR IN UPHOLDING THE TRIAL COURT'S REFUSAL TO DEFINE FOR THE JURY THE REASONABLE DOUBT STANDARD AFTER THE JURY SPECIFICALLY REQUESTED A DEFINITION OF REASONABLE DOUBT.

In a criminal trial, the United States has the burden to prove the guilt of a defendant beyond a reasonable doubt. Williams v. United States, 271 F.2d 703 (4th Cir. 1959). The United States Supreme Court has recognized that the reasonable doubt standard "plays a vital role in the American scheme of criminal procedure." In re Winship, 397 U.S. 358,

363, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970). Among other things, the reasonable doubt standard ". . . is a prime instrument for reducing the risk of convictions resting on factual error." Id. In order for a conviction to be upheld, the evidence must tend to prove the defendant's guilt beyond a reasonable doubt, regardless of whether the evidence is direct or circumstantial. United States v. Dockery, 417 F.2d 330 (4th Cir. 1969). The "beyond a reasonable doubt" requirement applies in state as well as federal proceedings. See In re Winship, 397 U.S. at 364, 90 S.Ct. at 1072-73.

When analyzing the question of if or when to define reasonable doubt, and the confusion it has created, one need look no further than the Fourth Circuit precedent. The Fourth Circuit previously adhered to a general rule that it was the duty of

district courts to define and explain the meaning and application of the term "reasonable doubt". Williams, 271 F.2d at 705. However, the practice of district court judges in attempting to define the term "reasonable doubt" was subsequently disfavored in the Fourth Circuit. Murphy v. Holland, 776 F.2d 470, 475-76 (4th Cir. 1985), abrogated on other grounds, 475 U.S. 1138, 106 S.Ct. 1787, 90 L.Ed.2d 334 (1986); United States v. Moss, 756 F.2d 329, 333 (4th Cir. 1985) ("[r]ecognizing that little can be gained from attempts to define reasonable doubt, while admitting that added confusion is often created by these well-intentioned judicial efforts, we join in the general condemnation of trial court attempts to define reasonable doubt in their jury instructions"). However, prior to the Fourth Circuit's holding in the case at bar, the Court

arguably recognized an "exception" to the general rule that definitions of the reasonable doubt standard should be avoided. This "exception" applied when the jury itself specifically requests the trial judge to explain the concept of reasonable doubt. United States v. Adkins, 937 F.2d 947, 950 (4th Cir. 1991) ("[t]he only exception to our categorical disdain for definition [of reasonable doubt] is when the jury specifically requests it"). Indeed, the Fourth Circuit has recognized as far back as the Murphy decision that " . . . the wisest course for trial courts to take is to avoid defining reasonable doubt in their instructions unless specifically requested to do so by the jury." Murphy, 776 F.2d at 475 (emphasis added). See also, United States v. Headspeth, 852 F.2d 753, 755 (4th Cir. 1988), abrogated on other

grounds, Taylor v. United States, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990) (recognizing "exception" where jury specifically requests explanation of reasonable doubt standard).

Thus, according to the Fourth Circuit, when the jury specifically requests that the court explain the concept of "reasonable doubt", the exception set forth by the above-referenced Fourth Circuit decisions applies, " . . . and it is the duty of the court to define and explain the meaning and application of 'reasonable doubt'." Williams, 271 F.2d at 705. The scenario of a jury specifically requesting a definition of "reasonable doubt" was recently addressed by the Fourth Circuit in United States v. Russell, 971 F.2d 1098, 1108 (4th Cir. 1992), cert. denied, ___ U.S. ___, 113 S.Ct. 1013, 122 L.Ed.2d 161 (1993), where

the Fourth Circuit stated: "We generally disapprove of instructions defining reasonable doubt, but we have suggested that such an instruction should be given when the jury is 'demonstrably confused or uncertain' and requests such an instruction."

In affirming the Petitioner's conviction in the case at bar, the Fourth Circuit dismissed the foregoing authority as dicta. United States v. Reives, 15 F.3d at 46. According to the court's decision "the underlying premise in all our cases is that trying to explain things will confuse matters, and we cannot see why a jury request should change this premise." United States v. Reives, 15 F.3d at 46.

This statement by the court in Reives misses the point; if the jury has specifically asked for help, they are

already confused! How can "trying to explain things" only "confuse matters" when the jury's request for an explanation is itself based upon confusion? To simply ignore this confusion on the grounds that "it won't matter anyway" leaves the defendant's fate in the hands of a judge's guesswork. What if a definition will clear the way for the jury? What if it would "matter"? If a definition of reasonable doubt can assist the jury in their deliberations after they have requested help, what possible reason could there be for not providing the definition? It certainly cannot make matters worse. The defendant deserves the benefit of the doubt, not the court. Bollenbach v. United States, 326 U.S. 607, 612-613, 66 S.Ct. 402, 405, 90 L.Ed.350 (1946) ("when a jury makes explicit its difficulties a trial judge should clear them away with

concrete accuracy"); United States v. Laing, 889 F.2d 281, 290 (D.C.Cir. 1989) cert. denied, Martin v. United States, 494 U.S. 1008, 110 S.Ct. 1306, 108 L.Ed.2d 482 (1990) ("where the jury explicitly reveals its confusion on an issue, however, the court should reinstruct the jury to clear away the confusion"); United States v. Hayes, 794 F.2d 1348 (9th Cir. 1986) cert. denied, 479 U.S. 1086, 107 S.Ct. 1289, 94 L.Ed.2d 146 (1987) (District Court has responsibility to eliminate confusion when a jury asks for clarification).

Moreover, the narrow "exception" to the rule prohibiting definitions of reasonable doubt, whether dicta or not, was not created in a vacuum. Instead, it was carved out by the court to protect a defendant's constitutional right to due process by reducing the prospects of jury confusion. While the phrase "all men are

created equal" certainly has merit, it does not, by any stretch of the imagination, translate into a conclusion that all juries are equal -- whether in their capacity to evaluate and judge evidence, or in their ability to understand complicated legal concepts. Stated differently, some juries find no difficulty in understanding and applying the court's instructions, while other juries, for one reason or another, may need further assistance from the court. When a defendant's liberty is at stake in a criminal trial, a court should make every effort to insure that confusion does not undermine the tenets of our criminal procedure. If a jury needs no further assistance after receiving the court's initial instructions, then let them go to work. However, if the jury feels that it cannot properly proceed without further

instructions or clarification, then the court should provide the requested assistance pursuant to approved pattern jury instructions. See United States v. Ricks, 882 F.2d 885, 894 n.12 (4th Cir. 1989), cert. denied, King v. United States, 493 U.S. 1047, 110 S.Ct. 846, 107 L.Ed.2d 841 (1990) (court should define reasonable doubt upon request from jury to do so);

The Fourth Circuit's decision in United States v. Moss, supra, clearly sets forth the proper procedure that a trial judge should follow when the jury specifically requests an explanation of the reasonable doubt standard: "[w]e suggest that whenever a jury request makes an instruction defining reasonable doubt necessary, district courts should accurately replicate the pattern jury instruction used to avoid any unnecessary

confusion." United States v. Moss, 756 F.2d at 334 & n.1. In United States v. Moss the court quoted the pattern jury instruction found in 1 E. Devitt & C. Blackmar, Federal Jury Practice and Instructions §11.14 (3d ed. 1977), which states as follows:

> Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.

United States v. Moss, 756 F.2d at 334 & n.1. This pattern instruction was also given by the trial court in United States v. Russell, supra, after a specific jury request for such an instruction. United States v. Russell, 971 F.2d at 1108. Other courts have held that the pattern jury instruction set forth in Federal Judicial Center, Pattern Criminal Jury Instructions 28 (1987) (instruction 21)

should be used by trial courts when attempting to define reasonable doubt. United States v. Hall, 854 F.2d at 1044.[2] In fact, the Hall court stated that ". . . a district judge who on the basis of his experience with juries and his observation of the particular jury thinks that such an instruction [on reasonable doubt] would help the jurors in their deliberations should be allowed to give it, especially if the jury requests further instruction on reasonable doubt." Id. (Emphasis added). Thus, the courts do have a proper

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[2] This pattern jury instruction on reasonable doubt reads as follows: "Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty."

course to follow once a definition of reasonable doubt is necessary.

Cases from four federal circuits expressly require the trial court to define reasonable doubt. In Blatt v. United States, 60 F.2d 481 (3rd Cir. 1932) the defendant appealed his conviction for maintaining a common nuisance. After the evidence was presented, the trial court refused to define reasonable doubt in its jury instructions. The specific instruction requested had previously been approved by this court in Agnew v. United States, 165 U.S. 36, 17 S.Ct. 235, 41 L.Ed. 624 (1897). The Third Circuit reversed the conviction holding that it was prejudicial error not to give an "instruction upon the meaning in the law of the term 'reasonable doubt'." Blatt v. United States, 60 F.2d at 481. Similarly, in Friedman v. United States, 381 F.2d 155

(8th Cir. 1967) the Eighth Circuit held that it is the trial court's "duty" to instruct on the meaning of reasonable doubt, and failure to do so constitutes error. Friedman, 381 F.2d at 160.

In United States v. Pepe, 501 F.2d 1142 (10th Cir. 1974) the defendant was convicted on charges of conspiracy to possess and possession of heroin. At the conclusion of the trial the court defined reasonable doubt for the jury as follows:

> A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as a reasonably prudent man would be willing to rely and act upon in the most important of his own affairs. A defendant is not convicted on mere suspicion or conjecture.

United States v. Pepe, 501 F.2d at 1143.

Understandably, the Tenth Circuit found the foregoing definition constitutionally sufficient and affirmed the defendant's conviction. More importantly, however, the court expressly recognized the necessity to define reasonable doubt:

> At the outset, we recognize that the reasonable doubt standard is a constitutional cornerstone of the criminal justice system. A defendant is entitled to have his jury apprised of this standard and its corollary, the presumption of innocence, and is entitled to have the meaning of reasonable doubt explained to the jury.

United States v. Pepe, 501 F.2d at 1143 (emphasis added).

Finally, in Schencks v. United States, 2 F.2d 185 (D.C.Cir. 1924) the defendant was convicted of selling narcotics. The Circuit Court for the District of Columbia reversed the conviction on the grounds that, inter alia, the trial court failed to define for the jury the term reasonable

doubt. The Circuit Court expressly noted that the defendant had requested that the trial court provide the jury with a definition of reasonable doubt.

Although the Supreme Court has never expressly decided that issue, the court's previous decisions do establish the importance of the reasonable doubt standard in our judicial system. In the case of In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), Justice Brennan discussed at length the importance of the reasonable doubt standard in the context of our judicial system. The case presented the issue of whether proof beyond a reasonable doubt was required during the adjudicatory stage of a juvenile proceeding. Before discussing the merits of the case, Justice Brennan discussed the importance of reasonable doubt:

> The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a nation. The demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798.
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> * * *
>
> The reasonable doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence . . . that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law'.

In re Winship, 397 U.S. at 361-62, 90 S.Ct. at 1071-72, quoting in part, Coffin v. United States, 156 U.S. 432, 453, 15 S.Ct. 394, 403, 39 L.Ed.2d 481 (1895). See also Brinegar v. United States, 338

U.S. 160, 174, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1949) ("guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property"); Davis v. United States, 160 U.S. 469, 484, 16 S.Ct. 353, 357, 40 L.Ed. 499 (1895) ("no man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them . . . is sufficient to show beyond a reasonable doubt the existence of every fact

necessary to constitute the crime charged").

According to the foregoing authority, the concept of reasonable doubt is a "cornerstone" or "bedrock" of our judicial system and plays a "vital role" in the adjudication of guilt or innocence. It stands to reason that in order to safeguard this cornerstone of our judicial system, the jury must understand what reasonable doubt means, especially when they convey to the court that they are confused about the term's meaning. What is the point of claiming that "reasonable doubt" is at the foundation of our criminal justice system and then ignore the fact that the jury doesn't understand what the concept means. Simply stated, if the jury does not understand what reasonable doubt means and has been provided no guidelines whatsoever from the

court, how can we really know whether or not the "foundation" of our criminal justice system is even being applied? See In re Winship, 397 U.S. at 361-62, 90 S.Ct. 1071-72. Again, the defendant must be given the benefit of the doubt. The stakes are simply too high to ignore jury confusion once it is brought to the attention of the trial court.

The case of Taylor v. Kentucky, 436 U.S. 478, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978) also illustrates the importance this court places on the concept of reasonable doubt. The court in Taylor expressly recognized that a logical relationship existed between the presumption of innocence and the principle that the prosecution must prove guilt beyond a reasonable doubt. Taylor, 436 U.S. at 483, 98 S.Ct. at 1933. The Taylor court found that a jury instruction on the

presumption of innocence was one method of protecting a defendant's constitutional right under the due process clause to be judged solely on the evidence presented at trial. Taylor, 436 U.S. at 486, 98 S.Ct. at 1935. Taylor held that a trial court's refusal to grant the defendant's request to instruct the jury on a presumption of innocence was a clear violation of his rights under the due process clause. Taylor, 436 U.S. at 490, 98 S.Ct. at 1937.

While the Taylor decision involved a pattern jury instruction on "the presumption of innocence", and not the standard of "reasonable doubt", it is nevertheless instructive because it involved the failure of the trial court to properly instruct a jury which was obviously confused as to the legal standards involved in rendering their

verdict.[3] A jury which struggles with legal concepts unfamiliar to them, and who reach out to the court for assistance in understanding the implication of such terms, must necessarily receive proper instruction from the court so that the jury's decision comports with the requirements of due process. Stated differently, when a jury discontinues deliberations and says "we don't understand what reasonable doubt means", it is inconceivable that a trial court can simply ignore the jury's request and instead, in effect, require the jury to figure it out for themselves.

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[3] The trial judge in Taylor had employed an apparently home-made definition of reasonable doubt, which the court described as "Spartan" and "confusing". Taylor, 436 U.S. at 490, 98 S.Ct. at 1937. The Taylor Court believed that an instruction on the "presumption of innocence" was necessary to counter the confusion experienced by the jury.

In Cage v. Louisiana, 498 U.S. 39, 111 S.Ct. 328, 112 L.Ed. 2d 339 (1990), this court ruled that a defendant's due process rights were violated when the trial court improperly instructed the jury that the "reasonable doubt" standard was the equivalent of a "substantial" and "grave" doubt. According to the Cage court:

> The charge (i.e., jury instruction on reasonable doubt) did at one point instruct that to convict, guilt must be found beyond a reasonable doubt; but it then equated a reasonable doubt with a "grave uncertainty" and an "actual substantial doubt," and stated that what was required was a "moral certainty" that the defendant was guilty. It is plain to us that the words "substantial" and "grave" as they are commonly understood, suggest a higher degree of doubt than is required for acquittal under the reasonable doubt standard. When those statements are then considered with the reference to "moral certainty" rather than evidentiary certainty, it becomes clear that a reasonable juror could have interpreted the instruction to allow a finding of guilt based

> on a degree of proof below that required by the due process clause.

Cage, 498 U.S. at 41, 111 S.Ct. at 329-330.

The Cage decision is analogous because it involved a situation in which a defendant's due process rights were violated by the jury's use of a "degree of proof" standard which was not consistent with the reasonable doubt standard. In the instant case, the jury itself admitted that they were confused as to the "degree of doubt" necessary to convict the Petitioner. It stands to reason that the jury, upon the court's refusal to explain the reasonable doubt standard, may have employed a "degree of doubt" which exceeded that required under the Constitution.

This court further clarified its position on errors committed by the trial

court involving the "reasonable doubt" standard in Sullivan v. Louisiana, ___ U.S. ___, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993). In Sullivan, the court ruled that the trial judge who gave a definition of "reasonable doubt" that was essentially identical to the one held unconstitutional in Cage, supra, committed reversible error. The State of Louisiana contended that the error in the jury instruction as harmless, yet the Court adamantly disagreed:

> It is self-evident, we think, that the Fifth Amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is probably guilty, and then leave it up to the judge to determine (as Winship requires) whether he is guilty beyond a reasonable doubt. In other words, a jury verdict required by the Sixth Amendment is a jury verdict of guilty beyond a reasonable

> doubt. Our per curiam opinion in Cage, which we accept as controlling, held that an instruction of the sort given here does not produce such a verdict. (Footnote omitted). Petitioner's Sixth Amendment right to jury trial was therefore denied.

Sullivan, 113 S.Ct. at 2080.

The Sullivan court went further to explain "why" errors regarding the "reasonable doubt" standard require reversal. According to the court:

> [T]he essential connection to a "beyond a reasonable doubt" factual finding cannot be made where the instructional error consists of a misdescription of the burden of proof, which vitiates all the jury's findings. A reviewing court can only engage in pure speculation -- its view of what a reasonable jury would have done. And when it does that, "the wrong entity judge[s] the defendant guilty." [Citation omitted].

Sullivan, 113 S.Ct. at 2082. (Emphasis added.)

It goes without saying that it is impossible to determine the "degree of doubt" which the jury in this case ultimately chose to employ, and that this Court must necessarily engage in "pure speculation" in determining whether the jury used the correct evidentiary standard in determining the Petitioner's guilt. Given the rationale of the United States Supreme Court in Cage and Sullivan, such an instruction on "reasonable doubt" (pursuant to a specific jury request) becomes all the more important to guarantee that the jury, which is admittedly confused, employs the proper degree of proof during its deliberations on the defendant's guilt or innocence. Whether a jury is confused by an improper definition of reasonable doubt, or whether a jury is confused by the absence of a proper definition, is simply irrelevant:

confusion is confusion, whatever its source.

Finally, on March 22, 1994 this court announced its decision in the cases of Victor v. Nebraska and Sandoval v. California, ___ U.S. ___, 114 S.Ct. 1239, ___ L.Ed.2d ___, (62 U.S.L.W. 4179) (1994). In Victor and Sandoval, the Supreme Court upheld two convictions on the grounds that the definitions of reasonable doubt given by the respective trial courts were constitutionally permissible. Writing for the court, Justice O'Connor stated that the "constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course." However, Justice O'Connor did not speak directly to the issue at hand: is it prejudicial error for the trial court to refuse to define reasonable doubt

after the jury has requested a definition during deliberations? The fact that the jury in the case at bar expressly requested a definition of reasonable doubt would take this case out of the scope of Justice O'Connor's statement "as a matter of course".

Justice Ginsburg also addressed the issue of whether or not to define reasonable doubt in her concurring opinion. Justice Ginsburg noted that the Supreme Court has never held that "the concept of reasonable doubt is undefinable, or that trial courts should not, as a matter of course, provide a definition." Justice Ginsburg went on to state that "even if definitions of reasonable doubt are necessarily imperfect, the alternative -- refusing to define the concept at all -- is not obviously preferable." Finally, Justice

Ginsburg acknowledged that the Federal Judicial Center has proposed a definition of reasonable doubt that is "clear, straightforward and accurate." The arguments set forth by Justice Ginsburg are made only stronger by the fact that in this case the court refused to define reasonable doubt after the jury made a specific request for a definition.

The reasonable doubt standard is the foundation of our criminal justice system. It is the measuring stick upon which all relevant and admissible evidence is to be measured. If the jury does not fully understand how the measuring stick works or how far up the stick the proof of guilt must rise, its verdict will necessarily be based upon speculation and conjecture. Such a verdict does not comply with due process. Moreover, the defendant's guilt or innocence may hinge upon whether or not

the trial court clarifies the confusion. Without a hard and fast rule requiring clarification when the jury expresses confusion, the defendant's guilt or innocence will depend upon what circuit he or she is fortunate (or unfortunate) enough to be tried in or, as the Fourth Circuit precedent dictates, the makeup of the individual panel within the particular circuit. Something so fundamental as reasonable doubt requires consistency; consistency that only this Court can provide. In making this determination, the Petitioner respectfully requests that the Court adopt the position that the trial court must define reasonable doubt if requested by the jury.

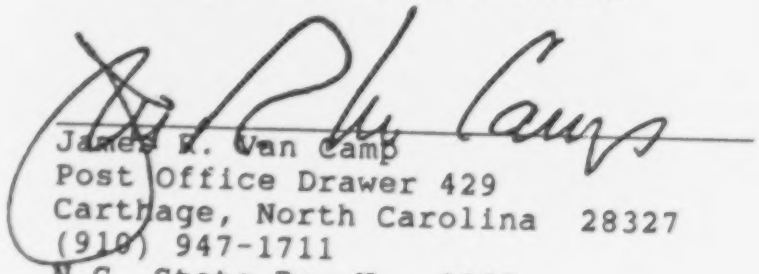
CONCLUSION

For the foregoing reasons, this Court should grant the Petitioner's Petition for

Writ of Certiorari to the United States Court of Appeals for the Fourth District and reverse the decision of the Court below.

Respectfully submitted,

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